

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

NORTHWEST BANK f/k/a NORTHWEST SAVINGS BANK, a Pennsylvania state-chartered savings association,

Plaintiff,

v.

MCKEE FAMILY FARMS, LLC, an Oregon limited liability company; **SCHARF FARMS, INC.**, an Oregon corporation; **DUSTIN WILFONG**, individually and dba **DUSTIN WILFONG FARMS**; **DENNY WILFONG**, individually and dba **WILFONG FARM'S**; **K & J FARMS, LLC**, an Oregon limited liability company; **CREEKSIDE VALLEY FARMS LLC**, an Oregon limited liability company; **ALFRED V. MULLET**; **SJB FARMS, LLC**, an Oregon limited liability company; **KAUER FAMILY FARMS, LLC**, an Oregon limited liability company; **DAN G. FANNING**, individually and dba **FANNING FARMS**; **CLARKE ELLINGSON**; **GILBERT & SON, INC.**, an Oregon corporation; **KEN CRUICKSHANK FARMS, INC.**, an Oregon corporation; **LARRY BURGER**; **DOERFLER FARMS, INC.**, an Oregon corporation; **GOLDEN VALLEY FARMS, LLC**, an Oregon limited liability company; **ZEIGLER FARMS, LLC**,

Case No. 3:15-CV-01576

STIPULATED ORDER GRANTING *EX PARTE* APPLICATION FOR ENTRY OF TEMPORARY RESTRAINING ORDER AND SETTING HEARING ON MOTION FOR PRELIMINARY INJUNCTION

Oregon limited liability company; **JANZEN FARMS LLC**, an Oregon limited liability company; **EDIGER FARMS, LLC**, an Oregon limited liability company; **JOHN IMLAH** and **MARGY IMLAH**, individually and dba **HOOD VIEW FARMS**; **DARYN BRUTKE**; **ANTHONY DERA EVE**; **RAINBOW HILL RANCH, INC.**, an Oregon corporation; **ROHDE GENERATIONS INC.**, an Oregon corporation; **M. GRANT RICE**; **KEITH B. DEJONG**; **MATTHEW J. RICE**; **DEAN C. DODSON**; **RYAN KADELL**; **ROBIN KADELL**; **MT. HOPE SEED CO., INC.**, an Oregon corporation; **RIDDELL FARMS, INC.**, an Oregon corporation; **GARY CROSSAN FARMS, LLC**, an Oregon limited liability company; **PAUL H. COUSSENS FARMS, LLC**, an Oregon limited liability company; **PHIL SPIESS**; **TIM PFEIFFER**; **KCK FARMS, LLC**, an Oregon limited liability company; **CARLTON SEED, LLC**, an Oregon limited liability company; **MEADOW RIDGE FARMS, INC.**, an Oregon corporation; **MARK W. GEHRING** and **CAROL A. GEHRING**, individually and dba **GEHRING FARMS**; **TRIPLE K, LLC**, an Oregon limited liability company; **LARRY D. BELL**; and **INTEGRATED SEED GROWERS, LLC**, an Oregon limited liability company,

Defendants.

THIS MATTER came before the Honorable Michael W. Mossman on Plaintiff's *Ex Parte* Application for Entry of Temporary Restraining Order and Preliminary Injunction ("Application"), against Defendant Riddell Farms, Inc. ("Defendant" or "Riddell"). Plaintiff was represented by Kimberly Sugawa-Fujinaga and Riddell was represented by John D. Albert, who appeared for the limited purpose of this hearing and the hearing scheduled below. The Court has carefully reviewed the Application, heard from the parties, and is otherwise fully advised in the premises.

PAGE 2 ORDER GRANTING *EX PARTE* APPLICATION FOR ENTRY OF TEMPORARY RESTRAINING ORDER AND SETTING HEARING ON MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Northwest Bank ("NWB") and Riddell stipulate, pursuant to Fed. R. Civ. P. 65 for immediate entry of a Temporary Restraining Order ("TRO") against Riddell on the following terms:

IT IS ORDERED AND ADJUDGED that NWB's Application for Temporary Restraining Order is hereby **GRANTED** as follows:

1. Riddell, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with Riddell having actual notice of this Order are hereby temporarily restrained from the sale or other disposal of the 2014 Radish Seed. The 2014 Radish Seed is in and is to remain in Riddell's possession, properly insured at all times, until further order of the Court and/or stipulation of the parties.¹

2. Riddell, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with Riddell having actual notice of this Order are hereby temporarily restrained from taking any additional seed from either of the warehouses owned by McKee Family Farms, LLC located at 11640 Elkins Road, Monmouth, OR 97361 and 22450 SW McKee Road, Amity, OR 97101;

3. Riddell, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with Riddell having actual notice of this Order are must provide an accounting to NWB of any proceeds from the sale of the 2014 Radish Seed that has occurred to date within fourteen (14) days of entry of this Order, and either: (1) tender such amounts to the court pending the outcome of this matter or (2) hold such sale proceeds in escrow

¹ "2014 Radish Seed" refers to the seed listed by lot number in the Settlement Sheet For Riddell Farms 2014 Radish Crop, attached to the Indemnity Agreement between McKee and Riddell. See Creal Dec. Ex. I.

pending issuance of final judgment by this Court on the priority of liens set forth in the Complaint;

4. This Temporary Restraining Order shall remain in effect until the hearing on the Motion for Preliminary Injunction as set forth below, or until such further dates as set by the Court or stipulated by the parties;

5. Pursuant to Fed. R. Civ. P. 65(c), NWB shall post an irrevocable letter of credit issued by NWB in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) as payment of damages to which Riddell may be entitled for a wrongful injunction or restraint, during the pendency of this action, or until further Order of the Court;

6. This Court will conduct a hearing on NWB's Motion for Preliminary Injunction on the 31st day of August, 2015, at 4:00 PM, Courtroom 16, of the U.S. District Courthouse, 1000 SW Third Avenue, Portland, Oregon. Defendant shall serve and file any answering affidavits or memoranda in response to Plaintiff's application on or before August 26, 2015; and NWB shall serve and file any reply papers on or before August 28, 2015. Those dates may be revised upon stipulation of all parties and approval of the court. At that hearing, Defendants and/or any other affected persons may challenge the appropriateness of this Order and move to dissolve the same, and the Court will hear arguments on the Motion for Preliminary Injunction;

7. **SERVICE**. A copy of this Order and of the Complaint filed in the above matter, together with all supporting papers, shall be served by NWB upon Riddell by hand delivery, regular mail, or electronic mail within two business days following NWB's receipt thereof; Riddell's counsel has agreed to accept service of the Order as well.

**8. ALL DEFENDANTS ARE HEREBY NOTIFIED THAT IF THEY DO NOT
TIMELY RESPOND TO THE MOTION FOR PRELIMINARY INJUNCTION AND AS**

ORDERED HEREIN, AND DO NOT APPEAR AT THE SCHEDULED HEARING, THE COURT MAY ENTER A PRELIMINARY INJUNCTION OR OTHER ORDERS AGAINST THEM BY DEFAULT.

DONE AND ORDERED in Chambers as the U.S. District Courthouse, 1000 SW Third Avenue, Portland, Oregon, this 21 day of August, 2015, at 3:40 PM AM/PM.

/s/ Michael W. Mosman
United States District Court Judge

Submitted by:

/s/ Kimberly Sugawa-Fujinaga
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